

46 Am. Jur. 2d Judges § 123

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

a. Bias or Prejudice as Grounds for Disqualification, in General

§ 123. Bias or prejudice of judge as grounds for disqualification, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1), 49(2)

A.L.R. Library

[Disqualification of judge for bias against counsel for litigant, 54 A.L.R.5th 575](#)

Forms

Forms relating to disqualification of judge due to bias or prejudice, generally, see Am. Jur. Pleading and Practice Forms, Judges [[Westlaw®\(r\) Search Query](#)]

Public confidence in the courts requires that cases be tried by unprejudiced and unbiased judges.¹ The right to disqualify a judge for bias and prejudice is included within the right to a fair trial guaranteed by the Due Process Clause of the United States Constitution.² Every litigant has the lawful right to expect utter impartiality and neutrality in a judge who tries his or her case.³ In every case, be it criminal or civil, the parties are entitled to the cold neutrality of an impartial judge.⁴

The traditional common-law rule was that disqualification for bias or prejudice was not permitted⁵ on the basis that the law will not suppose a possibility of bias or favor in a judge who is already sworn to administer impartial justice. The more recent trend, however, has been towards the adoption of statutes that permit disqualification for bias or prejudice,⁶ and various statutes and rules now provide for the disqualification of judges who are biased or prejudiced for or against a party and/or their attorney.⁷ Yet other provisions and decisions require the appearance of nonbias and disqualification when the judge's impartiality might reasonably be questioned.⁸

In making a claim of actual bias, it is not enough for a party to allege bias; a party seeking the disqualification of a judge must show some evidence of bias or prejudice,⁹ which must be clearly established by the record.¹⁰ A judge may not be disqualified for prejudice unless it is shown that the prejudice is directed against the party and is of such nature and character as would render it improbable that the party would receive a fair and impartial trial.¹¹ Where a judge becomes so embroiled in a controversy that the judge is unable to make a fair and objective decision, the judge must recuse him- or herself.¹²

CUMULATIVE SUPPLEMENT

Cases:

Recusal of district court judge for bias was unwarranted in requester's action under Freedom of Information Act (FOIA) against Department of Labor (DOL); requester's allegations rested entirely on the court's rulings in the instant action, and requester offered no factual basis to support any claim that the court harbored favoritism toward DOL or antagonism toward requester. 5 U.S.C.A. § 552; 28 U.S.C.A. § 455. *Jordan v. U.S. Department of Labor*, 308 F. Supp. 3d 24, 100 Fed. R. Serv. 3d 671 (D.D.C. 2018).

It is proper, rather than amounting to judicial bias, for court to use cases and language from a party's trial briefs. *Schmidt v. Superior Court*, 44 Cal. App. 5th 570, 257 Cal. Rptr. 3d 699 (2d Dist. 2020), as modified on denial of reh'g, (Feb. 14, 2020) and review denied, (Apr. 15, 2020).

Judge did not demonstrate bias or prejudice by signing arrest warrant against ex-husband for failing to make purge payment to ex-wife, as required by contempt order for ex-husband's failure to pay childcare expenses and property equalization payments pursuant to decree of dissolution, and thus, recusal was not warranted; although ex-husband attempted to make payment and clerk had returned his check to him, it was unclear when judge learned that ex-husband attempted to make a payment, and the day after arrest warrant was filed, the judge signed order recalling the arrest warrant. *McCullough v. McCullough*, 299 Neb. 719, 910 N.W.2d 515 (2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 Castleberry v. Jones, 68 Okla. Crim. 414, 99 P.2d 174 (1940); State v. Nunes, 99 R.I. 1, 205 A.2d 24 (1964).
- 2 State v. Mincey, 141 Ariz. 425, 687 P.2d 1180 (1984); State v. Dunsmore, 2015 MT 108, 378 Mont. 514, 347 P.3d 1220 (2015); State v. Hollingsworth, 160 Wis. 2d 883, 467 N.W.2d 555 (Ct. App. 1991).
- 3 State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984).
No judge will preside in a case in which he or she is not disinterested and impartial. *Butler v. State*, 95 A.3d 21 (Del. 2014).

4 Mauna Kea Anaina Hou v. Board of Land and Natural Resources, 136 Haw. 376, 363 P.3d 224 (2015).
5 Boyd v. State, 321 Md. 69, 581 A.2d 1 (1990).
6 State v. Calhoun, 306 Md. 692, 511 A.2d 461 (1986).
7 § 126.
8 §§ 134, 135.
9 In re Sanders, 540 B.R. 911 (Bankr. S.D. Fla. 2015); Gray v. Berg, 2016 ND 82, 878 N.W.2d 79 (N.D.
2016); Koon v. Fares, 379 S.C. 150, 666 S.E.2d 230 (2008); State v. Zorn, 195 Vt. 381, 2013 VT 65, 88
A.3d 1164 (2013).
10 DeGrace v. DeGrace, 147 Vt. 466, 520 A.2d 987 (1986).
Recusal was not warranted in an anticybersquatting case, even though some websites at issue were highly
critical of the judge. Faegre & Benson, LLP v. Purdy, 367 F. Supp. 2d 1238 (D. Minn. 2005).
11 Idaho Department of Health and Welfare v. Doe, 161 Idaho 660, 389 P.3d 946 (2016).
To warrant the disqualification of the trial judge, the alleged bias of the judge must be of such a nature and
intensity to prevent the defendant from obtaining a trial uninfluenced by the court's prejudgment. Morgan
v. Propst, 301 Ga. App. 402, 688 S.E.2d 357 (2009), judgment aff'd, 288 Ga. 862, 708 S.E.2d 291 (2011).
12 In re Estate of Elliott, 993 P.2d 474 (Colo. 2000); Purpura v. Purpura, 115 N.M. 80, 1993-NMCA-001, 847
P.2d 314 (Ct. App. 1993).
As to prior contact with a party as constituting bias, see § 133.

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